



PATENT
Docket No. 312762001530

CERTIFICATE OF MAILING BY "FIRST CLASS MAIL"

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Assistant Commissioner for Patents, Washington, D.C. 20231, on January 11, 2000.


Joy Day

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Ann MONOSOV and Xinyu Fu

Serial No.: 09/023,232, for Reissue of
U.S. Patent 5,569,812

Filing Date: February 13, 1998

NUDE MOUSE MODEL FOR HUMAN
NEOPLASTIC DISEASE

Examiner: unknown

Group Art Unit: unknown

DECLARATION OF THOMAS D. MAYS

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

I, Thomas D. Mays, declare as follows:

1. I am an authorized representative of applicants for the above-captioned application for reissue of U.S. Patent 5,569,812. I submitted an application for reissue of this patent on 13 February 1998.

2. My office received a Notice to File Missing Parts of this application which was mailed on 18 March 1998. In response, on 16 October 1998, a petition for filing under 37 C.F.R. § 1.47(a) was submitted. This petition was dismissed on 13 July 1999. Attached to this petition was an executed Consent of Assignee, a Certificate signed by the Assignee under § 3.73(b), an executed Declaration by inventor Ann Monosov, and an executed, but we believed

defective, Declaration by inventor Fu. The reason I believed that the Declaration was defective was that although inventor Fu had signed the declaration, the address was inserted subsequent to his signature without his initials authorizing this address. The following paragraphs detail the events which transpired both before and subsequent to the filing of the petition dated 16 October 1998 to obtain signatures of the two co-inventors of the subject matter of U.S. Patent 5,569,812:

3. On 2 April 1998, I provided to Dr. Robert Hoffman, President of AntiCancer, Inc., assignee of the entire interest in the subject patent, by first class mail through the United States Postal Service ("USPS") the Reissue Application Declaration And Power Of Attorney By Inventor ("Declaration") to be filed in the herein Reissue Application, along with a copy of the application as filed.¹ Dr. Hoffman was requested to obtain the signatures of each of Dr. Xinyu Fu and Dr. Ann Monosov, (see Exhibit 1, a letter signed by my secretary, and enclosures).

4. A copy of the declaration to be filed in this application was signed as received by Dr. Fu and dated 1 May 1998. However, the declaration did not include information for Dr. Fu's residence, citizenship and post office address, and Dr. Fu did not supply it.

5. Dr. Hoffman informed me that Dr. Fu had said that Dr. Fu was relocating his residence from San Diego, California to Providence, Rhode Island. Based upon that information, AntiCancer supplemented the signed Declarations with Dr. Fu's putative Rhode Island address so that they could be forwarded to Dr. Fu for his review and initials approving these modifications (see Exhibit 2). When I was unable to confirm the correct mailing address, a Declaration was prepared listing Dr. Fu's last known address and this Declaration was mailed to AntiCancer, Inc. as stated below in Paragraph 8.

6. On 15 August 1998, I prepared two letters deposited as certified mail with the USPS and addressed to Dr. Ann Monosov. The first letter was sent to Dr. Monosov's last known address based upon records of her previous employment with AntiCancer, Inc.: 8148 Genesee Avenue; Suite 120; San Diego, CA 92122, and included a copy of the Declaration to be filed in the herein application (and a Declaration in the above-noted abandoned reissue) as well as the respective applications (see Exhibit 3). This letter was returned undelivered (see Exhibit 4). The second letter was mailed to an address for Dr. Monosov that was obtained using computer

¹ Papers regarding an additional reissue application with respect to U.S. Patent 5,491,284 (the '284 reissue) were sent as well. That reissue application has been abandoned without prejudice or disclaimer.

database records: 1715 Edgefield Lane; Encinitas, CA 92024-1977, and was a request that Dr. Monosov contact me by telephone to confirm that she was one of the joint inventors of the subject patent. This letter was received by Dr. Monosov as evidenced by the signed certified mail return receipt postcard (see Exhibit 5).

7. On 26 August 1998, I was able to reach Dr. Monosov by telephone. Dr. Monosov confirmed her address as the address to which the second letter was sent. I therefore sent by first class mail to Dr. Monosov a copy of the Declaration to be filed in the herein application (and the abandoned reissue) along with the applications in each. Dr. Monosov returned these Declarations signed and dated as of 31 August 1998 (see Exhibit 6). However, I neglected to request that Dr. Monosov correct the information that was provided for her residence, citizenship and postal address in a cover letter, although I had requested her to do so in our phone conversation on 26 August 1999. Dr. Monosov did not correct these particulars.

8. I provided another copy of this Declaration (and a corresponding declaration in the abandoned reissue) along with the respective applications for Dr. Fu's signature to AntiCancer under cover of a letter dated 26 August 1998, requesting that Dr. Fu provide the information for his residence, citizenship and post office address (see Exhibit 7). However, Dr. Fu had left the employment of AntiCancer, Inc.

9. In an effort to complete formalities correctly, I then revised the Declarations to correct the information for residence, citizenship and postal address for both inventors. On 11 September 1998, I deposited as Express Mail with the USPS, a copy of the application and a counterpart Declaration for Dr. Fu's signature and addressed to Dr. Xinyu Fu, at what was thought to be his last known address (3724 Miramar Street, Apt. C, La Jolla, CA 29037) and a copy of the application and a counterpart Declaration for Dr. Monosov's signature and addressed to Dr. Monosov at her known current address (1715 Edgefield Lane, Encinitas, CA 92024-1977). Dr. Monosov returned her signed Declaration dated 15 September 1998 (see Exhibit 8). The Declaration sent to Dr. Fu for signature was not returned.

10. I inquired as to the status of delivery of the Declaration sent to Dr. Fu and was informed by the USPS that the Express Mail addressed to 3724 Miramar Street, Apt. C, La Jolla, CA 29037 was not delivered, that since the Express Mail certificate did not provide a telephone number to contact sender, this piece of mail was destroyed after thirty days.

11. Subsequent to filing of Applicants' Petition on 16 October 1998, it was noted that due to a clerical error, Dr. Fu's last known address was incorrectly listed in the Petition and on the address label and should have been 3725 Miramar Street, Apt. C, La Jolla, CA 29037, not 3724 Miramar Street.

12. On 26 January 1999, a copy of Declaration and of the application were sent via USPS certified mail to Dr. Fu's last known correct address (3725 Miramar). A return receipt postcard was received evidencing delivery by a signatory, the precise spelling of whose name could not be determined (see Exhibit 9).² However, as can be seen, the USPS mailing stamp on this postcard evidences that this card was mailed from Providence, Rhode Island. In attempting to confirm this delivery, the USPS provided conflicting information. The details of conversations between the USPS and my office are provided by Declaration of R. Lynn Cruz, enclosed herewith.

13. On 29 March 1999, a copy of the Declaration and of the application were again sent via USPS certified mail as well as by USPS Express Mail to Dr. Fu's last known correct address (3725 Miramar) (see Exhibit 10). The Express Mail package was returned to sender (see Exhibit 11). However, the return receipt postcard from the certified mailing was not returned nor does the USPS have any record of this certified mailing (see Exhibit 12) (also, see Declaration of R. Lynn Cruz).

14. On 17 August 1999, I deposited with the USPS another copy of the Declaration and of the application in a certified mailing addressed to Dr. Fu at the 3725 Miramar address. A return receipt postcard was received indicating delivery on 28 August 1999, and accepted by a party whose signature does not appear to be that of Dr. Fu (see Exhibit 13). No signed Declaration from Dr. Fu has been received.

15. In view of numerous efforts to obtain a signed Declaration from Dr. Fu providing correct information as to residence, citizenship and mailing address, I prepared a Declaration for Dr. Monosov's signature to be executed on her behalf and on the behalf of the remaining joint inventor, Dr. Xinyu Fu, as provided under 37 CFR 1.47(a). This Declaration and a copy of the application were deposited on 13 September 1999, with the USPS as certified mail and addressed

² The handwritten corrections of the address on the return receipt postcard as well as to the face of the envelope were made prior to mailing. This transmittal was correctly addressed before being deposited with the USPS.

my letter dated 2 November 1999, and that was sent by certified mail to Dr. Fu's last known address (see Exhibit 16). No response has been received. In addition, I made another attempt to obtain the signature of Dr. Monosov on behalf of herself and Dr. Fu in a letter dated 1 November 1999, sent to Dr. Monosov's last known address by certified mail (see Exhibit 17). No response has been received. I concluded, therefore, that Dr. Monosov now refused to sign the Declaration, as two requests were received by her but no response has been obtained.

17. I believe that the foregoing shows that conscientious efforts have been made to obtain the signature of Dr. Fu on a petition which correctly lists his citizenship and address. In addition, unsuccessful attempts have been made to obtain the signature of Dr. Monosov on behalf of herself and Dr. Fu. The foregoing facts, stated under oath, confirm that either Dr. Fu refuses to sign a corrected petition or cannot be reached and that Dr. Monosov, although having signed a Declaration on her own behalf, refuses to sign a Declaration on behalf of both herself and Dr. Fu.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Jan. 11, 2000
Date



Thomas D. Mays